IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.12318 of 1998

Between:

China Waltair Mohanmadia Mosque, Rep by its President

Md. Ghouse, Managing Committee, China Waltair,
Vishakapatnam.

..... PETITIONER

AND

1 The President, District Wakf Committee,
Collectorate Complex, Vishakapatnam.
2 The Inspector Auditor Wakf,
Collectorate Complex, Vishakapatnam.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or order in the nature of Certiorari to call for the records in connection with the order Ref. No. Ax/VSP/WM/ Elec/98
dt. 24-4-98 of Respondent 1 and quash the same by issuing a Writ of Certiorari or any other appropriate Writ, order or direction.

Counsel for the Petitioner: MR.NOUSHAD ALI

Counsel for the Respondents: MR.A.M.QURESHI

(SC FOR AP WAKF BOARD)

The Court made the following:

ORDER:

Questioning the impugned proceedings dated 24.04.1998, passed by the 1st respondent-District Wakf Committee, suspending the President and the Managing Committee of China Waltair Mohammadia Mosque, and directing them to handover the charge of China Waltair Mosque to Janab Md. Nazeer, Member, District Wakf Committee, Visakhapatnam, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the Wakf Board.

The main contention of the learned counsel for the petitioner is that either under Regulation 20(f) of the District Wakf Committees Regulations, 1973 or the Wakf Act, 1995, the 1st respondent-District Wakf Committee has any power or authority to suspend the President and the Managing Committee of the petitioner-Mosque, and as per Section 64 of the Wakf Act, 1995, which corresponds to Section 43 of the Wakf Act, 1954, the power to place the President or a member of the Managing Committee or the Managing Committee itself under suspension, is vested in the State Wakf Board, and therefore, neither the show cause notice dated 20.04.1998 issued by respondent No.1-District Wakf Committee, under Regulation No. 20(f) of the District Wakf Committees Regulations, 1973, nor the subsequent impugned order, issued by him under the provisions of the Wakf Act, 1995, can be said to be under any power or authority of law, and therefore, are liable to be quashed and set aside.

The respondents did not file any counter disputing the allegations made by the petitioner. The learned Standing Counsel appearing for the Wakf Board did not dispute the legal position argued by the petitioner's counsel. He, however, submitted that the Managing Committee of the petitioner-Mosque, by reason of the interim order passed in the writ petition, completed its term, and as such, no further orders need be passed.

Though the term of the Managing Committee of the petitioner-Mosque is completed, the learned counsel for the petitioner submitted that if the writ petition is not decided on merits, which questioned the suspension of the President and Managing Committee of the petitioner-Mosque, the stigma attached would continue to remain, and as such, prayed that the writ petition be decided on merits.

The Wakf Act, 1995, which came into operation from 01.01.1996, replaced Regulation No. 20(f) of the District Wakf Committees Regulations, 1973, and by the date of issuing the show cause notice dated 20.04.1998 or passing of the impugned order subsequently, Regulation No. 20(f) of the District Wakf Committees Regulations, 1973 was not in force, and as such, the very show cause notice and impugn order, have no force of law. Further, as per Section 64 of the Wakf Act, 1995, which corresponds to Section 43 of the Wakf Act, 1954, the power to suspend the President or a member or the Managing Committee itself, is vested in the State Wakf Board, and as such, respondent No.1- District Wakf Board, could not have issued the show cause notice and the impugned order placing the President and the Managing Committee of the petitioner-Mosque under suspension. Hence, the show cause notice, dated 20.04.1998 and the subsequent impugned order dated 24.04.1998, issued by respondent No.1-District Wakf Board, are without any authority or power.

In the result, the writ petition is allowed. The impugned order is quashed and set aside. No costs.

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N.V. RAMANA, J.

Date: 26.04.2005

Nsr/Ksr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday, the Twenty Sixth day of April, Two Thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The President, District Wakf Committee,
Collectorate Complex, Vishakapatnam.
2 The Inspector Auditor Wakf,
Collectorate Complex, Vishakapatnam.

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